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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In re Applications of	)	MM DOCKET NO. 92-27
)	
SOUTHWEST ALLEN COUNTY SCHOOLS	)	File No. BPED-900215MC
Channel 216A)	
Lafayette Township, Indiana)	
)	
FAITH CHRISTIAN ACADEMY	)	File No. BPED-901203MN
Channel 216B1)	
Berne, Indiana)	
)	
For Construction Permit for a)	
New, Noncommercial, Educational)	
FM Station)	

To: Administrative Law Judge
Edward Luton

MASS MEDIA BUREAU'S CONSOLIDATED COMMENTS IN
SUPPORT OF JOINT MOTION FOR APPROVAL OF AGREEMENT
AND PETITIONS FOR LEAVE TO AMEND

1. On September 22, 1992, Southwest Allen County Schools (Southwest) and Faith Christian Academy (Faith) filed a Joint Motion for Approval of Agreement which was supplemented on November 5, 1992. Petitions for Leave to Amend were filed by Southwest and Faith on November 4 and 5, 1992. The Mass Media Bureau submits the following consolidated comments in support of the joint motion and petitions.

2. The settlement agreement contemplates the amendment of both applications to remove the mutual exclusivity and to allow both applications to be granted. In addition, Southwest will pay Faith's legitimate and prudent expenses in an amount not to exceed \$8,500.

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3. Review of the settlement agreement and attachments, as supplemented, reveals that the applicants have filed the documentation required by Section 73.3525 of the Commission's Rules, which implements Section 311(c) of the Communications Act of 1934, as amended. Specifically, in addition to the agreement, they have filed appropriate declarations from a principal of each party to the agreement which state that the respective applications were not filed for an improper purpose. They also state that grant of the joint motion would be in the public interest because it would expedite the provision of two new noncommercial FM services in Lafayette Township and Berne, Indiana. In addition, Faith has set forth an itemization demonstrating that its legitimate and prudent expenses incurred in this proceeding are in excess of \$8,500.

4. In its amendment, Southwest proposes to reduce power from 0.4 kilowatts to 0.2 kilowatts and to modify its directional antenna. Faith also proposes to amend its application by changing operation from Channel 216B1 to Channel 217, by reducing power, and by using a directional antenna.

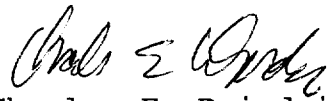
5. The Bureau's engineering staff has analyzed the proffered amendments and has concluded that the amendments conform with the Commission's technical standards. Specifically, Faith has now satisfactorily addressed the issue of how it proposes to avoid RF exposure to workers on its tower.

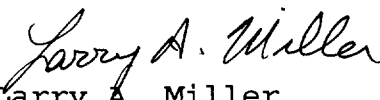
Accordingly, the contingent environmental issue specified against Faith may be deleted. Moreover, the Bureau has determined that the two amendments will eliminate the mutual exclusivity between the applications of Southwest and Faith.

6. For the reasons stated in Faith's Petition for Leave to Amend, the Bureau believes that Faith has shown good cause for acceptance of its amendment. The "major change" rules do not apply to post-designation amendments. California Broadcasting Corporation, 90 FCC 2d 800, 808 (1982). Moreover, good cause is generally found when a proposed amendment will eliminate the need for a hearing. Las Americas Communications, Inc., 5 FCC Rcd 1634 (1990). Amendments to change frequency, such as the instant amendment of Faith, have been allowed in other proceedings involving noncommercial FM applicants in order to eliminate mutual exclusivity. See Memorandum Opinion and Order, FCC 92M-997, released October 8, 1992; Memorandum Opinion and Order, FCC 91M-1861, released June 12, 1991; Memorandum Opinion and Order, FCC 91M-1428, released April 24, 1991; and Memorandum Opinion and Order, FCC 89M-2039, released August 7, 1989 (copies attached).

7. In view of the foregoing, the Bureau supports grant of the Petitions for Leave to Amend, acceptance of the amendments, grant of the Joint Motion, approval of the settlement agreement, deletion of the contingent environmental issue specified against Faith, and grant of the applications of Southwest and Faith, as amended.

Respectfully submitted
Roy J. Stewart
Chief, Mass Media Bureau


Charles E. Dziedzic
Chief, Hearing Branch


Larry A. Miller
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Federal Communications Commission
2025 M Street, N.W.,
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Washington, D.C. 20554


November 17, 1992

CERTIFICATE OF SERVICE

Michelle C. Mebane, a secretary in the Hearing Branch, Mass Media Bureau, certifies that she has on this 17th day of November, 1992, sent by regular United States mail, U.S. government frank, copies of the foregoing "Mass Media Bureau's Consolidated Comments in Support of Joint Motion for Approval of Agreement and Petitions for Leave to Amend" to:

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Michelle C. Mebane

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

FCC 92M-997
30034

In re Applications of	)	MM DOCKET NO. 92-170
)	
LIBERTY UNIVERSITY, INC.	)	File No. BPED-911206MB
Channel 210A)	
Lynchburg, Virginia)	
)	
VISION COMMUNICATIONS, INC.)	
WRXT (FM) Channel 212C2)	
Roanoke, Virginia)	
	)	File No. BMPED-920414IF
)	
For Construction Permits for New and)	
Modified Noncommercial FM facilities)	
)	

MEMORANDUM OPINION AND ORDER

Issued: October 6, 1992; Released: October 8, 1992

1. Under consideration are 1) Petition for Leave to Amend, filed September 1, 1992 by Liberty University, Inc.; 2) Mass Media Bureau's Comments on Petition for Leave to Amend, filed September 11, 1992; 3) Petition for Leave to Amend, filed September 28, 1992 by Vision Communications, Inc.; 4) Mass Media Bureau's Comments on Amendment of Vision Communications, Inc.; and 5) Motion for Summary Decision, filed August 19, 1992 by Liberty University, Inc.

2. Liberty's application for a new non-commercial FM station on Channel 210A at Lynchburg, Virginia, is mutually exclusive with Vision's application for modification of non-commercial station WRXT(FM), on Channel 212C2 at Roanoke, Virginia. By its Petition for Leave to Amend filed on September 1, 1992, Liberty seeks to change its proposed channel of operation from 210A to 215A to eliminate the mutual exclusivity. Liberty also requests a waiver of Section 73.509 of the Commission's Rules because its amendment would cause a prohibited overlap between its 100dBu contour and Vision's 60dBu contour in a .36 square kilometer area. This overlap area is less than 0.008 percent of the total coverage area of WRXT(FM), and there is no population residing within the overlap area.

3. By its Petition for Leave to Amend filed on September 28, 1992, Vision proposes to increase its power and change its directional antenna pattern. Also, Vision agrees to accept the contour overlap which will be caused by Liberty. Vision requests a waiver of Section 73.509 because of the small amount of overlap which will occur.

4. Each of the applicants has shown good cause for the amendments. The amendments will remove the mutual exclusivity and eliminate the need for a hearing. Grant of the requested waiver of Section 73.509 to allow the small third-adjacent channel overlap would be consistent with Commission precedent set forth in Educational Information Corporation, 6 FCC Rcd. 2207 (1991).

5. Liberty's Motion for Summary Decision is directed at the air hazard issue specified against that applicant. Liberty shows that the transmitter site it proposes to use is an existing tower for which a "no hazard" determination was issued by the Federal Aviation Administration on May 3, 1990. Summary decision will be granted with respect to the issue.


6. By letter dated October 1, 1992, the Chief, Audio Services Division, advises that Vision has submitted a pleading which satisfactorily addresses the contingent environmental issue specified in the Hearing Designation Order. The Mass Media Bureau requests that the contingent environmental issue against Vision be eliminated; that request will be granted.

7. Accordingly, IT IS ORDERED that 1) Section 73.509 IS WAIVED; 2) the Petitions filed by Liberty and Vision ARE GRANTED and the Respective Amendments ARE ACCEPTED; 3) Liberty's Motion for Summary Decision IS GRANTED and the air hazard issue IS RESOLVED in favor of Liberty; 4) the Application of Liberty University, Inc. IS GRANTED; and 5) the Application of Vision Communications, Inc., IS GRANTED, subject to the following condition:

Further modifications to the facilities specified in BPED-911206MB, as amended, will not be construed as a per se modification of WRXT (FM)'s license. See Educational Information Corporation, 6 FCC Rcd 2207 (1991).

8. IT IS ALSO ORDERED that this proceeding IS TERMINATED.

FEDERAL COMMUNICATIONS COMMISSION


Edward Luton
Administrative Law Judge

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

FCC 91M-1861
4850

In re Applications of	)	MM DOCKET NO. 90-654
)	
THE CEDARVILLE COLLEGE	)	File No. BPED-881214MN
)	
OHIO UNIVERSITY	)	File No. BPED-890922MA
)	
For Construction Permit)	
for a New Noncommercial)	
FM Station on Channel 220A)	
in Chillicothe, Ohio)	

MEMORANDUM OPINION AND ORDER

Issued: June 10, 1991 ; Released: June 12, 1991

1. Under consideration are the following related pleadings: "Joint Petition for Approval of Settlement Agreement" filed April 17, 1991, by The Cedarville College (Cedarville) and Ohio University (University); "Statement for the Record" filed April 30, 1991, by Cedarville and University; "Petition for Leave to Amend" filed May 14, 1991, by Cedarville; "Supplement to Joint Petition for Approval of Settlement Agreement" filed May 14, 1991; and "Mass Media Bureau's Comments on Joint Petition for Approval of Settlement Agreement and Petition for Leave to Amend" filed by the Bureau on May 23, 1991.


2. Cedarville and University have entered into an agreement to resolve this proceeding in a manner whereby both applications can be granted. Specifically, in its petition for leave to amend, Cedarville seeks to amend its application to specify FM Channel 211 and to relocate its antenna site. Such amendment, if accepted, will resolve the mutual exclusivity presently existing between the Cedarville and University applications. In this connection, Cedarville presently serves the Chillicothe area with an FM translator on Channel 219, which can no longer operate once service commences on Channel 220. Thus, a grant to Cedarville of its amended application for Channel 211 will permit Cedarville to (1) maintain continuity of its service in the area, and (2) improve and expand its listening audience by reason of service from a full-power station. The amendment proffered by Cedarville has been reviewed by the Mass Media Bureau and has been found to be in compliance with the Commission's technical rules. Moreover, because the amendment is a post-designation amendment, the Commission's major change rules do not apply. California Broadcasting Corporation, 90 FCC 2d 800, 808 (1982). Under the circumstances of this proceeding, Cedarville has shown good cause for the acceptance of its amendment, and such amendment will be accepted.

3. The agreement between Cedarville and University, which has been submitted for approval, provides for the payment to Cedarville by University of \$4,500. In addition, the agreement provides that the commencement of operation of University's station will be coordinated with the commencement of operation of Cedarville's station on Channel 211. In support of the agreement, the applicants have complied with the rules governing agreements of this nature. Specifically they have demonstrated that approval of the agreement will serve the public interest, and that neither application was filed for the purpose of reaching or carrying out a settlement agreement. Thus, the agreement will be approved.

Accordingly, IT IS ORDERED that the "Petition for Leave to Amend" filed by The Cedarville College on May 14, 1991, IS GRANTED, and the amendment, specifying Channel 211 and a relocation of the antenna site, IS ACCEPTED;

IT IS FURTHER ORDERED that the "Joint Petition for Approval of Settlement Agreement" filed by The Cedarville College and Ohio University on April 17, 1991, and supplemented on April 30, 1991, and May 14, 1991, IS GRANTED; the agreement IS APPROVED; the application of The Cedarville College, as amended (File No. BPED-881214MN), IS GRANTED; the application of Ohio University (File No. BPED-890922MA), IS GRANTED; and this proceeding IS TERMINATED.

FEDERAL COMMUNICATIONS COMMISSION



Joseph Stirmer
Chief Administrative Law Judge

JCC

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

FCC 91M-1428

In re Applications of	)	MM DOCKET NO. 90-606
)	
LAKESHORE COMMUNICATIONS, INC.	)	File No. BPED-880406MK
Channel 203)	
Green Bay, Wisconsin)	
)	
CATHOLIC DIOCESE OF GREEN BAY	)	File No. BPED-880303MB
WISCONSIN)	
Channel 201C)	
Green Bay, Wisconsin)	
)	
For Construction Permit for a)	
Non-Commercial Educational)	
FM Station)	
)	
EVANGEL MINISTRIES, INC.	)	File No. BPED-890224MA
Milladore, Wisconsin)	
)	
For Modification of Facilities of)	
Station WGNV(FM))	
Channel 203C1)	
Milladore, Wisconsin)	

MEMORANDUM OPINION AND ORDER

Issued: April 22, 1991

Released: April 24, 1991

1. Evangel Ministries, Inc. (Evangel), Lakeshore Communications, Inc. (Lakeshore), and Catholic Diocese of Green Bay (Catholic) have submitted a settlement package for ruling. It consists of (1) a Joint Request for Approval of Settlement Agreement filed April 3, 1991; (2) a Supplement to that Request filed by Catholic on April 16, 1991; (3) a Petition for Leave to Amend that Lakeshore filed on April 4, 1991; and (4) a Supplement to Petition For Leave to Amend that Lakeshore filed on April 16, 1991.

2. The Mass Media Bureau filed " ... Consolidated Comments on Joint Request for Approval of Settlement Agreement and Petition For Leave to Amend" on April 17, 1991.

Lakeshore's Petition For Leave to Amend

3. The Trial Judge must rule on Lakeshore's April 4, 1991 amendment request first. That request is a condition precedent to considering the April

3, 1991 joint request since the Lakeshore application submitted under the Settlement Agreement is the Lakeshore application as amended.

4. Lakeshore proffers an engineering amendment that will remove the mutual exclusivity among the three applications, and permit all three to be granted.

5. Lakeshore proposes to:

- (a) Change frequency from Channel 203 (88.5 MHz) to Channel 211 (90.1 MHz);
- (b) Increase the station's effective radiated power from 3 Kw to 6 Kw;
- (c) Relocate the transmitting antenna;
- (d) Decrease the height of the Antenna Radiation Center above average terrain (HAAT) and mean sea level (MSL);
- (e) Increase the height of the Antenna Radiation Center above ground level (AGL); and
- (f) Decrease the elevation on the top of the antenna supporting structure (including antenna, all other appurtenance and lighting) above ground level (AGL) and mean sea level (MSL).

6. The Mass Media Bureau says Lakeshore's engineering proffer complies with the Commission's technical rules; that good cause has been demonstrated for amending; and " ... that the Presiding Judge has jurisdiction to grant Lakeshore's request to amend from Channel 203 to 211" and the grant the amended application.¹

¹ Thus the Bureau takes the position that 47 CFR 73.3522(c) doesn't apply to this postdesignation amendment. That subsection provides:

"Notwithstanding the provisions of paragraph (b) of this section, and subject to compliance with the provisions of §73.3525, a petition for leave to amend may be granted, provided it is requested that the application as amended may be removed from the hearing docket and returned to the processing line. See §73.3571."

Ruling on The Amendment

7. Lakeshore's petition for Leave to amend will be granted and the engineering amendment will be accepted. Accepting the amendment will permit a universal settlement of this proceeding. So good cause is shown.

8. The only real question is whether after permitting Lakeshore to change frequencies from Channel 203 to Channel 211 the Trial Judge has jurisdiction over a "Channel 211 application."²

9. The Mass Media Bureau says the Trial Judge does have jurisdiction over Lakeshore's application as amended since the Commission's rule do not prohibit him from exercising such jurisdiction and " ... in two comparable hearing proceedings, the respective presiding judges have approved channel changes ..."

10. The Bureau's position will be credited. So Lakeshore's Petition For Leave to Amend will not only be granted, the Trial Judge will assume jurisdiction over the Lakeshore application as amended; i.e., the application for Channel 211 (90.1 MHz).

The Joint Request For Approval of Settlement Agreement

11. Evangel, Lakeshore and Catholic have settled their differences. Evangel's and Catholic's applications are not mutually exclusive. Lakeshore's application (prior to amendment) for Channel 201C in Green Bay, Wisconsin was mutually exclusive with both Evangel's and Catholic's applications. But by amending to Channel 211 (90.1 MHz), Lakeshore has removed that mutual exclusivity and all three applications can be granted.

Ruling

12. The Joint Request will be granted, and the accompanying Settlement Agreement will be approved. The parties have submitted the appropriate documents. See Oak television of Everett, Inc. 53 RR 2d 995 (1983). None of the three applicants filed their applications for an improper purpose.

13. Approval of the agreement will close out the case; speed up the start up of the two new noncommercial educational FM service that Station WGNV provides Milladore, Wisconsin. The public interest is thus furthered.

² The Hearing Designation Order (56 F.R. 4291 published February 24, 1991) only gave the Trial Judge jurisdiction over Channels 203, and 201C.

SO, the Petition For Leave to Amend that Lakeshore Communications, Inc. filed on April 4, 1991 IS GRANTED and the accompanying amendment to BPED-880406MK IS ACCEPTED;

The Joint Request For Approval Of Settlement that Evangel Ministries, Inc., Lakeshore Communications, Inc., and Catholic Diocese of Green Bay filed on April 3, 1991, IS GRANTED; and the accompanying Settlement Agreement IS APPROVED;

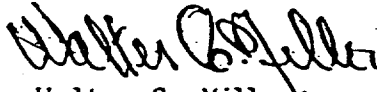
Lakeshore Communications, Inc.'s application (BPED-880406MK) as amended IS GRANTED;

Catholic Diocese of Green Bay, Wisconsin's application (BPED-890303MB) IS GRANTED;

Evangel Ministries, Inc.'s application (BPED 890224MA) IS GRANTED; and

This proceeding IS TERMINATED.

FEDERAL COMMUNICATIONS COMMISSION

A handwritten signature in dark ink, appearing to read "Walter C. Miller", is written over a faint, circular official stamp.

Walter C. Miller
Administrative Law Judge

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

FCC 89M-2039

011236

In re Applications of	)	MM Docket No. 89-309
)	
CABRINI COLLEGE	)	File No. BPED-860725MH
Radnor Township, Pennsylvania)	
)	
VILLANOVA UNIVERSITY IN THE)	
STATE OF PENNSYLVANIA	)	File No. BPED-870402KA
Villanova, Pennsylvania)	
)	
BUX-MONT EDUCATIONAL RADIO ASSOCIATION	)	File No. BPED-870514MN
Sellersville, Pennsylvania)	
)	
TRUSTEES OF THE UNIVERSITY OF PENNSYLVANIA	)	File No. BPED-870515OE
Philadelphia, Pennsylvania)	
)	
For a Construction Permit for a)	
Non-Commercial Educational FM station)	

MEMORANDUM OPINION AND ORDER

Issued: August 3, 1989;

Released: August 7, 1989

1. Under consideration are the following: Petition for Leave to Amend, filed July 10, 1989, by Cabrini College ("Cabrini"); Petition for Leave to Amend, filed July 10, 1989, by Villanova University in the State of Pennsylvania ("Villanova"); Petition for Leave to Amend, filed July 10, 1989, by Bux-Mont Educational Radio Association ("Bux-Mont"); Joint Motion for Approval of Agreement, filed July 10, 1989, by Cabrini, Villanova, Bux-Mont and the Trustees of the University of Pennsylvania ("Penn"); Petition for Leave to Amend, filed July 24, 1989, by Villanova; Petition for Leave to Amend, filed July 25, 1989, by Bux-Mont; Petition for Leave to Amend and Amendment to Application, filed July 25, 1989, by Penn; and Comments on Joint Motion for Approval of Agreement, filed July 28, 1989, by Mass Media Bureau.

2. The joint agreement proposes that the applications of Cabrini, Villanova and Bux-Mont each be granted, subject to the acceptance of an amendment to each applicant's engineering proposal. An engineering amendment to each of these applications was filed simultaneously with the filing of the joint agreement. In addition, the joint agreement contemplates a grant of Penn's pending application with the result that the coverage area of Penn's existing station, WXPB, will expand.

3. The engineering amendments of Cabrini, Villanova and Bux-Mont propose a change in frequency. Cabrini and Villanova propose identical technical facilities. Cabrini and Villanova, which propose a shared-time operation, seek to amend their applications to propose operation on Channel 206A,

rec'd
8-8-89

rather than Channel 203A. Bux-Mont seeks to amend its application to propose operation on Channel 205A, rather than Channel 204A. The applicants contend that a grant of these amendments will provide an aggregate of 2,259,284 people residing in an area of 5,188 square kilometers with the opportunity to receive new non-commercial FM service.

4. The engineering amendments will result in some contour overlap among the applicants. The applicants, therefore, request a waiver of Section 73.509 of the Commission's Rules which prohibits such overlap. The applicants note that the interference will not result in the loss of any present service to any listener. The applicants also note that the Penn proposal involves a relocation of WXPB's transmitter and a sharing with Station WPVI(TV), Philadelphia, of a diplexed antenna. This co-location and diplexing, they contend, will eliminate the interference between WXPB and WPVI(TV), thereby providing additional service to the public.

5. The Mass Media Bureau supports acceptance of the applicants' amendments and approval of the joint agreement and has offered the following comments. Here, the benefit of authorizing new and improved service outweighs the limited interference which will result. Significantly, none of the proposals will result in interference to a non-party to this proceeding, and each of the parties to this proceeding has agreed to accept interference as a condition of receiving a grant. Moreover, as noted by the applicants, no one currently receiving service will lose service as a result of acceptance of the applicants' amendments.

6. Additionally, it is noted that the parties have complied with Section 73.3525 of the Commission's Rules. The documents submitted include declarations from each of the parties asserting that their respective applications were not filed for the purpose of reaching or carrying out the joint settlement agreement. Approval of the agreement is in the public interest because it will eliminate the need for a hearing thereby conserving the resources of the non-commercial applicants and the Commission and further will expedite additional service to the public in the Philadelphia area.

7. In light of the foregoing, the engineering amendments will be accepted and a waiver of Section 73.509 will be granted. The joint agreement will be approved.

8. On July 24, 1989 and July 25, 1989, Villanova, Bux-Mont and Penn filed petitions for leave to amend their applications to provide information called for by the Hearing Designation Order ("HDO"). The Mass Media Bureau has reviewed these amendments and agrees with the applicants that they have met the HDO's requirements.

Accordingly, IT IS ORDERED that the Petitions for Leave to Amend, filed July 10, 1989, by Cabrini, Villanova and Bux-Mont ARE GRANTED, and the amendments ARE ACCEPTED.

IT IS FURTHER ORDERED that a waiver of Section 73.509 of the Commission's Rules IS GRANTED.

IT IS FURTHER ORDERED that the Petition for Leave to Amend, filed July 24, 1989, by Villanova, the Petition for Leave to Amend, filed July 25, 1989, by Bux-Mont and the Petition for Leave to Amend and Amendment to Application, filed July 25, 1989, by Penn ARE GRANTED, and the amendments ARE ACCEPTED.

IT IS FURTHER ORDERED that the Joint Motion for Approval of Agreement, filed July 10, 1989, by Cabrini, Villanova, Bux-Mont and Penn IS GRANTED and the joint agreement IS APPROVED, the application of the Trustees of the University of Pennsylvania IS GRANTED, the applications of Cabrini College, Villanova University in the State of Pennsylvania and Bux-Mont Educational Radio Association, as amended, ARE GRANTED and this proceeding IS TERMINATED.

FEDERAL COMMUNICATIONS COMMISSION

John M. Frysia
John M. Frysia

Administrative Law Judge